

Congress of the United States

Washington, DC 20515

June 5, 2013

0563

The Honorable Mignon Clyburn, Acting Chairwoman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dear Acting Chairwoman Clyburn,

Thank you for your continuing work to ensure that broadcasters, cable operators, satellite TV operators and other pay TV providers comply with the Commercial Advertisement Loudness Mitigation (CALM) Act, which prevents TV advertisements from being transmitted at louder volumes than the program material they accompany. We know the American people will be grateful when they are completely free from the nuisance of loud commercials.

As the Federal Communications Commission (FCC) approaches the six month mark since the CALM Act rules went into effect, we're writing to request your response to the following questions:

- 1) How many complaints has the FCC received from consumers reporting commercials that appear louder than the programming that they accompany? Please provide a breakdown of these complaints by month beginning in December 2012 and include any comparative data to the number of complaints received before the CALM Act went into effect.
- 2) Has the FCC observed any patterns with regard to non-compliance?
- 3) Has the FCC received any specific complaints regarding commercials inserted during "video-on-demand" programming?
- 4) How many waiver requests has the FCC received for temporary relief from the CALM Act rules and how many of these requests have been granted?

Thank you in advance for your cooperation and we look forward to your timely response to our questions.

Most gratefully,



Anna G. Eshoo
Member of Congress



Sheldon Whitehouse
United States Senator

cc: Commissioner Jessica Rosenworcel
Commissioner Ajit Pai



FEDERAL COMMUNICATIONS COMMISSION

June 27, 2013

Mignon L. Clyburn
Acting Chairwoman

The Honorable Anna G. Eshoo
Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Eshoo:

Thank you for your letter regarding the Commission's work implementing the Commercial Advertisement Loudness Mitigation (CALM) Act. I appreciate your dedication to this issue, and I am pleased to respond to your letter.

Following the CALM Act's requirements, the Commission relied upon a technical standard embraced by the industry when it adopted rules to improve the parity of volume between commercials and the accompanying programming. The Commission struck an appropriate balance between the rights of consumers and the potential impact on affected industries. As required by the Act, the Commission incorporated by reference the industry-created ATSC A/85 recommended practice. The A/85 recommended practice is a set of methods to measure and control the audio loudness of digital programming, and requires commercials to have the same average volume as the programming they accompany on both broadcast television and multichannel video programming distributors (MVPDs). The expectation is that compliance with the new rules will result in a reduction of instances of loud commercials for most consumers.

The Commission timely implemented the CALM Act in 2011, and the resulting rules went into effect at the end of last year. Our work is not done, however, as we must also address consumer complaints and overall compliance with the rules to achieve the benefits Congress intended. The CALM Act itself recognizes that loudness is subjective and therefore relies on the ATSC recommended practice to address the problem. Consequently, the Commission established an enforcement mechanism that relies on complaints from the public, which are reviewed for patterns or trends that indicate non-compliance and warrant investigation and potential penalties. That review is underway. We have provided additional detail about these efforts in the attached responses to your specific questions.

While it has only been a short time since the rules became effective, please be assured that we take seriously our responsibilities under the CALM Act. We will continue to provide information to the public regarding the issue, and we will work with the industries to ensure compliance.

Sincerely,

A handwritten signature in blue ink that reads "Mignon L. Clyburn".
Mignon L. Clyburn

Enclosure



FEDERAL COMMUNICATIONS COMMISSION

June 27, 2013

Mignon L. Clyburn
Acting Chairwoman

The Honorable Sheldon Whitehouse
United States Senate
502 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Whitehouse:

Thank you for your letter regarding the Commission's work implementing the Commercial Advertisement Loudness Mitigation (CALM) Act. I appreciate your dedication to this issue, and I am pleased to respond to your letter.

Following the CALM Act's requirements, the Commission relied upon a technical standard embraced by the industry when it adopted rules to improve the parity of volume between commercials and the accompanying programming. The Commission struck an appropriate balance between the rights of consumers and the potential impact on affected industries. As required by the Act, the Commission incorporated by reference the industry-created ATSC A/85 recommended practice. The A/85 recommended practice is a set of methods to measure and control the audio loudness of digital programming, and requires commercials to have the same average volume as the programming they accompany on both broadcast television and multichannel video programming distributors (MVPDs). The expectation is that compliance with the new rules will result in a reduction of instances of loud commercials for most consumers.

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Sincerely,

A handwritten signature in blue ink, reading "Mignon L. Clyburn", is positioned above the printed name.

Mignon L. Clyburn

Enclosure

- 1) How many complaints has the FCC received from consumers reporting commercials that appear louder than the programming that they accompany? Please provide a breakdown of these complaints by month beginning in December 2012 and include any comparative data to the number of complaints received before the CALM Act went into effect.

Response: Consumer complaints are generally submitted electronically, and we designed a special form for complaints about loud commercials, which we implemented on the date the rules took effect (December 13, 2012). Not surprisingly, the special form and the publicity surrounding the new rules prompted a large wave of complaints, which has subsided significantly and consistently over the past six weeks. A chart of the number of complaints the FCC received, by month, is set forth below.

Loud Commercial Complaints	
Month Received	Total Complaints
Dec-12	4,777
Jan-13	4,405
Feb-13	2,407
Mar-13	1,526
Apr-13	1,513
May-13	1,065
As of June 5, 2013	157
TOTAL	15,850

The total from December 13, 2012 through June 5, 2013, is 15,850. Roughly two-thirds of these complaints (10,700) were referred to the FCC's Enforcement Bureau for analysis to determine if enforcement action was warranted. The remaining complaints (5,150) were incomplete. With respect to incomplete complaints, consumers were informed that their complaints lacked necessary information and instructed as to how to re-file.

In the third quarter of 2012, before the rules took effect and the special form was implemented, the Commission received 192 complaints regarding loud commercials.

- 2) Has the FCC observed any patterns with regard to non-compliance?

Response: Enforcement Bureau staff reviews complaints that are forwarded from the Consumer and Governmental Affairs Bureau. Our effort in this regard is on-going, and as with any potential enforcement activities, we refrain from disclosing any information that could compromise our work. As provided in the rules implementing the CALM Act, the Enforcement Bureau seeks to identify patterns or trends of complaints. When a pattern or trend of complaints is identified, then further Enforcement Bureau inquiry may be taken, including sending a Letter of Inquiry to the station or MVPD that is responsible for the commercials complained of. The rules require the station or MVPD that receives such a letter to demonstrate that it is in compliance with the rules. The station or MVPD may demonstrate compliance either by showing that the commercial complained of did comply with the ATSC A/85 recommended practice or by conducting spot checks of the programming complained of to be sure it is in compliance.

Identifying a pattern or trend requires complex and multi-dimensional analysis of the complaints. We are continually reviewing the complaints and analyzing them by MVPD, by station, by commercial-complained of, by geography, and by programmer/network, among other factors. The data provided by consumers, however, is often not sufficiently specific or consistent to

facilitate reliable analysis. To improve the data, we re-examined the complaint form used for intake and identified improvements to make it easier for consumers to provide the specific data we need. However, implementing the improved form has been and continues to be delayed by lack of funding due to the Commission's reduced budget and the belt-tightening associated with sequestration.

- 3) Has the FCC received any specific complaints regarding commercials inserted during "video-on-demand" programming?

Response: We received 55 complaints regarding loud commercials that occurred in connection with or that pertained to On Demand programming.

- 4) How many waiver requests has the FCC received for temporary relief from the CALM Act rules and how many of these requests have been granted?

Response: As you know, the CALM Act includes two waiver provisions: (1) a financial hardship waiver (where entities are allowed up to two, one-year waivers), and (2) general waiver authority for good cause.

Under the financial hardship waiver provisions, generally, there is a four-part test for stations and MVPDs that requires information on financial condition, cost estimates, a detailed statement justifying postponed compliance, and an estimate with supporting information on how long until compliance can be achieved. In order to alleviate burdens on smaller entities consistent with the intent of Congress, the Commission adopted a streamlined process for small stations and MVPDs. Requests under the streamlined provisions are considered granted upon submission, unless the Commission notifies a small station or MVPD to the contrary.

The Commission has received 170 waiver requests from TV broadcast stations and multichannel video programming distributors (MVPDs) for temporary relief from the CALM Act rules – 168 Streamlined Financial Hardship Waiver Requests (for a one-year waiver of effective date of the rules) and two (2) General Waiver requests (for a short-term waiver of effective date of the rules). All 170 waiver requests were granted.

The waiver requests are available in the Commission's Electronic Comment Filing System (ECFS) under Docket No.11-93. Link: http://apps.fcc.gov/ecfs/comment_search/input?z=qiuxj. The Memorandum Opinion and Order granting the two limited temporary waivers under our general waiver authority is available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-2013A1.pdf.